



PATENT
Customer No. 22,852
Attorney Docket No. 08048.0048-000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Jean-Louis H. GUERET) Group Art Unit: 3751
)
Application No.: 10/810,821) Examiner: Huyen D. Le
)
Filed: March 29, 2004) Confirmation No.: 1007
)
For: COSMETIC APPLICATOR)

MAIL STOP AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO OFFICE ACTION DATED MARCH 3, 2006

In an Office Action dated March 3, 2006, the Examiner required an election of species under 35 U.S.C. § 121 among the following alleged distinct species:

Species I:	Fig. 2;
Species II:	Fig. 3;
Species III:	Fig. 4;
Species IV:	Fig. 5;
Species V:	Fig. 6;
Species VI:	Fig. 7;
Species VII:	Fig. 8;
Species VIII:	Fig. 10;
Species IX:	Fig. 11;
Species X:	Fig. 12;
Species XI:	Fig. 14;
Species XII:	Fig. 15;
Species XIII:	Fig. 16;
Species XIV:	Fig. 17;
Species XV:	Fig. 18;
Species XVI:	Fig. 19; and
Species XVII:	Fig. 72.

In addition, upon election of one of the alleged species above, the Examiner required an election of one of the following alleged sub-species for each of the following alleged groups of sub-species:

Group (a)

Sub-species 1: Fig. 50;
Sub-species 2: Fig. 21*;
Sub-species 3: Fig. 52;
Sub-species 4: Fig. 53;
Sub-species 5: Fig. 54;
Sub-species 6: Fig. 55;
Sub-species 7: Fig. 56;
Sub-species 8: Fig. 57;
Sub-species 9: Fig. 58;
Sub-species 10: Fig. 59;
Sub-species 11: Fig. 60;
Sub-species 12: Fig. 61;
Sub-species 13: Fig. 62; and
Sub-species 14: Fig. 63.

Group (b)

Sub-species A: Fig. 67;
Sub-species B: Fig. 68;
Sub-species C: Fig. 69;
Sub-species D: Fig. 70; and
Sub-species F: Fig. 71.

* Applicant respectfully notes that the Office Action appears to have erroneously indicated Fig. "21" rather than Fig. "51," since Fig. 21 does not relate to the alleged group.

Applicant respectfully traverses these election of species requirements for at least the following reasons.

The Examiner identified Species I through XVII as allegedly being independent or distinct and required an election of single species therefrom. The Examiner's identification of Species I through XVII, however, does not include Figs. 20 and 21. As a result, Applicant may be prevented from electing claims that "read" on subject matter shown in Figs. 20 and 21. Similarly, with respect to the election of species requirement for alleged Group (a), the Examiner's identification of Sub-species 1 through 14 does not include Figs. 64-66. Consequently, Applicant may be prevented from electing claim(s) that "read" on subject matter shown in Figs. 64-66.

For at least these reasons, Applicant respectfully submits that the Examiner's election of species requirements are incomplete and improper. Thus, reconsideration and withdrawal of the Examiner's election of species requirement is respectfully requested.

Irrespective of the validity of the Examiner's election of species requirements, to comply with the formal election requirement, Applicant provisionally elects to prosecute:

- Species III (Fig. 4);
- Sub-species 9 (Fig. 58) for alleged Group (a); and
- Sub-species B (Fig. 68) for alleged Group (b).

Applicant respectfully submits that at least claims 1-3, 7-11, 14, 15, 17, 19, 21-24, 26-34, 36-43, 47-51, 55, 57, 59, 61-64, and 66-80 are "readable" on elected Species III, Sub-species 9, and Sub-species B. Applicant respectfully notes that elected Sub-species 9 of Fig. 58 encompasses both a circular cross-sectional shape (e.g., claims 17 and 57) and a hollow cross-section (e.g., claims 19 and 59).

The Office Action does not specifically identify the claims that are generic to all of the alleged species and Sub-species. Applicant respectfully submits that at least independent claims 1 and 42 are generic to all of the alleged species and Sub-species. Applicant respectfully notes that upon allowance of a generic claim, all of the claims depending from, or otherwise containing all of the limitations of, any generic claims should be rejoined and examined on the merits.

If the Examiner believes that a telephone conversation might advance prosecution, the Examiner is cordially invited to call Applicant's undersigned representative at (202-408-4222).

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: May 3, 2006

By: 

K. Kevin Mun

Reg. No. 50,585